

# Memorandum of Understanding

## Reporting Alleged Breaches of Section 56, Data Protection Act 1998

### The Information Commissioner and ACRO Criminal Records Office

#### **Introduction**

1. This Memorandum of Understanding (MoU) establishes a framework for co-operation and information sharing between ACRO and the Information Commissioner (the Commissioner) in connection with the sharing of relevant information and intelligence, set out at 15 below. It sets out the role of each organisation and documents the practical working level arrangements between the Commissioner and ACRO.
2. The Commissioner and ACRO will monitor the operation of this memorandum and will review it, initially after six months from the date of this document, and subsequently from time to time as necessary.
3. Any changes to this memorandum identified between reviews may be agreed in writing between the parties.
4. Any issues arising in relation to this memorandum will be notified to the point of contact for each organisation (referred to in 25 below).
5. This memorandum is a statement of intent that does not give rise to legally binding obligations on the part of either the Commissioner or ACRO.

#### **Functions and powers of Commissioner**

6. The Commissioner is a corporation sole appointed by Her Majesty the Queen under the Data Protection Acts 1984 and 1998 to act as the UK's independent regulator promoting public access to official information and protecting personal data.
7. The Commissioner regulates the Data Protection Act 1998 (DPA), the Freedom of Information Act 2000 (FOIA), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR),

the Environmental Information Regulations 2004 (EIR) and the INSPIRE Regulations 2009.

8. Section 51 of the DPA places a duty on the Commissioner to promote the following of good practice by data controllers and the observance of the requirements of the DPA by organisations.
9. Where the Commissioner is satisfied that any of the data protection principles have been breached, a number of steps can be taken to seek to change the behaviour of the organisation including:
  - serving information notices requiring organisations to provide the Information Commissioner's Office with specified information within a certain time period;
  - issuing undertakings committing an organisation to a particular course of action in order to improve its compliance;
  - serving enforcement notices where there has been a breach, requiring organisations to take (or refrain from taking) specified steps in order to ensure they comply with the law;
  - conducting consensual assessments to check organisations are complying; and
  - issuing monetary penalty notices, requiring organisations to pay up to £500,000 for serious breaches.
10. The Commissioner may also prosecute those who commit criminal offences under the DPA.

### **Functions of ACRO**

11. ACRO was founded in 2006 following a decision by the Association of Chief Police Officers to establish an operationally focussed unit that would organise the management of criminal record information and improve the links between criminal records and biometric information.
12. Following agreement between ACPO on behalf of Chief Constables, and ACRO, the ACRO National Subject Access Team (NSAT) processes Subject Access Requests (National Checks) from applicants for their sensitive personal data which may be held on the Police National Computer (the PNC). ACRO is a Data Controller in Common in respect of personal data held on the PNC along with Chief Constables.
13. The PNC is a national police database that holds information on persons, vehicles and property for all police forces in England, Wales, Northern Ireland, Scotland, Jersey, Guernsey and the Isle of Man. It contains a number of different applications and each force is responsible for the maintenance of its own data held within those applications. The PNC applications for which ACRO will

provide subject access responses are the Person Record relating to the data subject.

14. For the purposes of this agreement, from 10 March 2015, the information to be exchanged with the Commissioner will be generated by NSAT.

### **Cooperation between ACRO and the Commissioner**

15. Since its inception, NSAT has had concerns over possible cases of enforced Subject Access.
16. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and at their discretion, ACRO agree that NSAT will alert the Commissioner to any potential breaches of Section 56 of the DPA discovered whilst undertaking its duties, and provide relevant supporting information and intelligence.
17. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and at his discretion, the Commissioner agrees that he will alert ACRO to any potential breaches of Section 56 of the DPA, or information relevant to the aims set out at 11 above, discovered whilst undertaking their duties, and provide relevant supporting information.
18. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and at their discretion, both parties will:
  - a) Communicate regularly to discuss matters of mutual interest (this may involve participating in multi-agency groups to address common issues and threats); and
  - b) Consult one another on any issues which might have significant implications for the other organisation.

### **Sharing information**

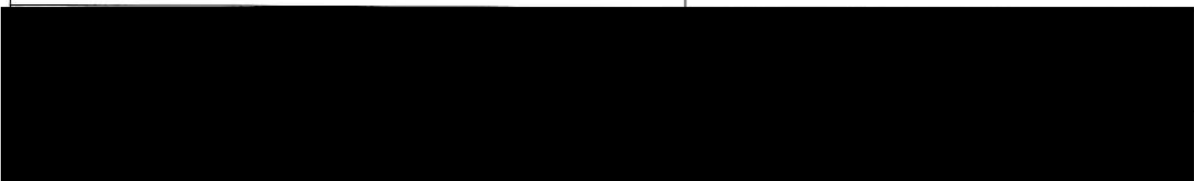
19. Subject to any disclosure restrictions applicable to ACRO, they may disclose confidential information to the Commissioner to facilitate the carrying out an investigation under Section 56 of the DPA, as set out in 14 and 16 above.
20. Where ACRO wishes to disclose to the Commissioner information necessary for the discharge by the Commissioner of his functions under the DPA, section 58 DPA provides that no enactment or rule of law prohibiting or restricting the disclosure of information shall preclude ACRO from furnishing such information to the

Commissioner.

21. In respect of information obtained by or furnished to the Commissioner for the purposes of his functions under the Information Acts, it is an offence under section 59 DPA for any current or former member of the Commissioner's staff or his agent to disclose such information without lawful authority.
22. Section 59(2)(e) DPA provides that a disclosure by the Commissioner of information obtained by or furnished to him is made with lawful authority where, having regard to the rights and freedoms or legitimate interests of any person, the disclosure is necessary in the public interest.
23. In addition, section 59(2)(d) DPA provides that a disclosure of information by the Commissioner is made with lawful authority where the disclosure is made for the purposes of any proceedings, whether criminal or civil.
24. The Commissioner may, at his discretion and in accordance with sub-sections 59(2)(d) and/or (e) DPA, disclose confidential information to ACRO, where this is necessary for performing the functions set out at 8 and/or 9 above.

### Points of contact

25.

ACRO	Information Commissioner
Kelly Glitheroe, Bureau Deputy Manager	Adam Stevens, Intelligence Hub Manager
PO Box 481 Fareham Hampshire PO14 9FS	Wycliffe House Water Lane Wilmslow SK9 5AF
	

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(Signature)

Ian Readhead  
Chief Executive ACRO  
National Director of Information

Date: 26/5/2015

**The Information Commissioner**

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(Signature)

Christopher Graham  
Information Commissioner

Date: 30/6/2015